

ADA, FMLA, WORKERS' COMPENSATION ANALYSIS

Americans With Disabilities Act (ADA)

1. No Yes Has a physical or mental impairment that substantially limits one or more major life activities? In order to make a determination consider and respond to the following:
- a. What is the nature and severity of the impairment?
 - b. What is the expected duration of the impairment?
 - c. What is the permanent or long-term impact or expected impact of the impairment on the individual?
 - d. Does s/he uses a mitigating measure to control or eliminate symptoms or limitations of the impairment? If so, what kind of measure is used (e.g., medication, insulin, prosthetic limb, hearing aid)?
 - e. Identify any behaviors s/he may have specifically developed to cope with the limitations of an impairment.
 - f. Does the mitigating measure or compensating behavior fully or only partially control the symptoms or limitations of the impairment.
 - g. How long s/he has been using the mitigating measure or compensating behavior?
 - h. Does the mitigating measure tend to be less effective under certain conditions or have limited effectiveness? If certain conditions interfere with the effectiveness of a mitigating measure, how often and for how long a period do these conditions arise?
 - i. Does the mitigating measure itself causes any limitations in performing a major life activity.

- j. Which major life activity is s/he substantially limited (e.g., walking, speaking, thinking, seeing, breathing, hearing, learning, concentrating, performing manual tasks, interacting with others, caring for oneself, etc.):
- k. If not substantially limited in any other major life activity, is s/he substantially limited in "working". Specific factors that maybe used in making the determination of whether the limitation in "working" is "substantial" include:
- the geographical area to which the individual has reasonable access;
 - the job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or
 - the job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

2. No Yes Does this person have a "record of" a disability (medical record, school record, employment records, erroneous classification of disability such as false positive test results, etc.)? If so specify.

3. No Yes Has this person been "regarded as" having an impairment? If so specify which of the below:

- a. Has physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation.
- b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment.
- c. Does not have a physical or mental impairment but is treated by a covered entity as having a substantially limiting impairment.

Evidence of being "regarded as" having an impairment:

If you answered "Yes" to 1,2, or 3 this person may have a covered disability under the Americans with Disabilities Act. You may need to obtain medical documentation in order to make a final determination. If you obtain medical information, make certain you follow the confidentiality and record keeping

standards required. Complete section II. The Accommodation Process to determine what accommodation may be necessary.

If you answered "No" to 1, 2, and 3, this person does not have a covered disability under the ADA. Skip section II. The Accommodation Process and go to section III. The Family Medical Leave Act.

The ADA Accommodation Process

Reasonable (effective) accommodations must be made to *qualified individuals* with disabilities unless to do so would cause an *undue hardship* on the organization.

1. No Yes Have the *essential functions* for this position been determined?
If "No", complete the Essential Functions Grid, ADA-1.

Working collaboratively with the individual with a disability, determine which functions, both essential and marginal, can be performed.

2. No Yes Can this person perform the *essential functions* (NAC 284.356) of the job?
If "No", which *essential functions* can't be performed?

3. No Yes Can this person perform the *marginal functions* of the job?
If "No," which *marginal functions* can't be performed?

If the answer to questions 2 and 3 is "Yes", no accommodation is necessary. If the answer to question 2 or 3 is "No", in consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the functions of the position. The *essential functions* of the job must be able to be performed either with or without accommodation.

4. Would this person be able to perform the functions of the position by:
- No Yes a. renovation or new construction of facilities?
 - No Yes b. job restructuring?
 - No Yes c. modified work schedules?
 - No Yes d. flexible leave policies?
 - No Yes e. acquisition or modification of equipment and devices?
 - f. other:

In order to fully determine the appropriate accommodation, medical inquiries related to an employee's disability and functional limitations may include consultation with knowledgeable professional sources, such as occupational and physical therapists, rehabilitation specialists, and organizations with expertise in adaptations for specific disabilities. Medical inquiries should be limited to an individual's functional abilities and limitations in relation to job functions, and about whether the individual meets the employer's health and safety requirements.

5. No Yes Does this person pose a *direct threat* to himself/herself or others?
If the answered is "Yes", accommodation may not be necessary unless the accommodation would eliminate or reduce below the level of a "direct threat" the risk of substantial harm.

6. Determine how to pay for the needed accommodation.
No Yes a. Is there a no cost solution?
No Yes b. Is there money in the agency or department budget for the needed accommodation?
No Yes c. Can the accommodation be provided through Vocational Rehabilitation or other private or public entities?
 d. other:

The employer may chose which accommodation to provide if there is more than one which would be effective. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the agency. When determining whether the expense of an accommodation would be an undue hardship, the full resources of the State must be considered.

Continue to section III. Family Medical Leave Act (FMLA).

III. The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles a qualified employee to a maximum of 12 workweeks of leave in a "rolling" 12-month period for a qualifying event. Please review the Family and Medical Leave Act Overview for detailed information and forms required.

Qualified Employee

- 1. No Yes Has the employee worked for the State of Nevada for at least 12 months (collectively, not continuously)?
- 2. No Yes Has the employee worked at least 1,250 hours during the 12 month period preceding the requested leave?
- 3. No Yes Is the employee an elected official, immediate advisor or member of the elected officials' personal staff, or a policy making appointee?

If you answered "Yes" to 1 and 2 and "No" to 3, this person is a qualified employee. If you answered "Yes" to 3 this employee may not be eligible and you may want to consult with your FMLA liaison for further clarification.

Qualified Event

1. No Yes Is the request for this leave due to the birth of a child, to care for a newborn child, or for the placement with the employee of a child for adoption or foster care?

If you answered “Yes,” the request for this leave is a qualified event. The following stipulations apply:

- Entitlement to leave expires 12 months after the child’s date of birth for birth parents or 12 months after the date of placement of the child with adopted or foster parents.
- An employee may take leave intermittently or on a reduced leave schedule only if the agency agrees.
- If a husband and wife are both qualified employees working for the State of Nevada, they are together entitled to only a total of 12 workweeks of leave.

2. No Yes Is the request for a serious health condition which makes the employee unable to perform the functions of his or her position?

If you answered “Yes,” the request for this leave is a qualified event. The following stipulations apply:

- “Unable to perform the functions of the position” means a health care provider finds that the employee is unable to work at all or is unable to perform one or more of the essential functions of the employee’s position within the meaning of the ADA.
- When medically necessary, leave may be taken intermittently or on a reduced leave schedule with or without agency concurrence.
- An agency may require that a request for leave be supported by a certification from a health care provider.
- An agency may require a 2nd and 3rd medical opinion at the agency’s expense.

3. No Yes Is the request for this leave to care for a spouse, child, or parent with a serious health condition?

If you answered “Yes,” the following stipulations apply:

- A child is defined as a biological, adopted or foster child, a stepchild, a legal ward of a person with the daily responsibility of caring for and financially supporting that child; and who is under 18 years of age or is 18 years of age or older and incapable of caring for himself because of a mental or physical disability.
- A parent is defined as a biological parent of an employee or the person who had daily responsibility of caring for and financially supporting the employee when the employee was a child. The term does not include a parent of the spouse of the employee.
- “Care” encompasses both physical and psychological care and includes arranging third-party care for the family member.

Continue to section IV. Workers' Compensation.

IV. Workers' Compensation

1. No Yes Is this a work related injury or an occupational disease?

If the answer is "Yes", this is a workers' compensation issue and the rules governing workers' compensation apply.

Contact the designated person in your agency or the Risk Management Division for additional information and forms.

V. In General

If the employee is qualified in two or more areas (i.e., ADA and FMLA), the laws and regulations of both must be observed. When the laws or regulations overlap, the one that provides the greatest protection to the employee governs. If you have additional questions or are unsure as to whether an applicant or employee is a qualified individual, consult with your agency ADA Coordinator or Deputy Attorney General.

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